

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Raymond Kelley,

Plaintiff

v.

Resurgent Capital Services, LP and
Redline Recovery Services LLC

Defendant(s)

Case No: _____
JURY DEMAND

PLAINTIFF'S ORIGINAL COMPLAINT & JURY DEMAND

Plaintiff, Raymond Kelley ("Kelley") brings this action under the Fair Debt Collections Practices Act, 15 USC §1692, *et seq.* ("FDCPA"), as well as under the Texas Debt Collection Act, Texas Finance Code §392.001, *et seq.* ("TDCPA") and the Texas Deceptive Trade Practices Act, Subchapter E, Chapter 17, Business & Commerce Code ("DTPA"), to obtain actual, statutory damages, injunctive relief and other relief for the Defendants' violations of the FDCPA, the TDCPA and the DTPA.

A. JURISDICTION & VENUE

1. Jurisdiction of this Court attains pursuant to 15 USC §1692k(d), 28 USC §1331 and §1337(a) and the doctrine of pendant jurisdiction for the TDCPA claims pursuant to 28 USC §1367.
2. Venue is proper in the Southern District of Texas under 28 USC §1391(b)-(c) and because a substantial part of the acts and transactions occurred here and all of the Defendants transacted business here.

B. PARTIES

3. Plaintiff is a citizen of the State of Texas and an individual who resides in Harris County Texas and a "consumer" as defined by 15 USC §1692a(3) and TDCPA §392.001(1).
4. Defendant, Resurgent Capital Services LP, is a Delaware limited partnership engaged in the business of collecting consumer debts, with the registered agent for service, CT Corporation Systems, whom may be served with process at 350 N. St Paul St, Dallas TX 75201.
5. Defendant, Redline Recovery Services LLC, is an entity engaged in the business of collecting consumer debts, a Georgia Limited Liability Corporation doing business throughout Texas with the registered agent for service, LexisNexis Document Solutions, Inc, whom may be served with process at 701 Brazos Street Suite 1050, Austin TX 78701.
6. All Defendants are in the business of the collection of consumer debts which were acquired after default. No Defendant extends credit to any consumer whose debt it acquires. Defendants are "debt collectors" as defined by 15 USC §1692a(6) and TDCPA §392.001(6). Defendants are also "third party debt collectors" as defined by TDCPA §392.001(7).

C. FACTUAL ALLEGATIONS

7. On or about May 24, 2007, the Plaintiff was contacted by the Defendant, Resurgent Capital Services LP ("Resurgent") by and through their collection agency Capital Management Services LP ("Capital"). Resurgent via Capital made the Plaintiff a settlement offer on an outstanding GE-

WalMart credit card account ending in 2880 with the then stated principal balance of \$4,436.36 for a settlement of \$1,414.06, as long as Plaintiff settled such account by the payment due date of May 30, 2007. See Exhibit A.

8. Plaintiff, by and through his law firm of Seideman Law Firm PC, made such an immediate telephonic payment on May 25, 2007. See Exhibit B.
9. Subsequent to this settlement, Resurgent placed such account for collection with Redline Recovery Services LLC ("Redline").
10. On April 9, 2009, Resurgent by and through Redline sent collection letters and made collection calls to Plaintiff.
11. Resurgent and Redline were aware that Plaintiff was represented by the Seideman Law Firm PC at this time, yet they still made direct contacts with the Plaintiff.
12. Resurgent and Redline were also aware that Plaintiff had settled this debt, yet, Resurgent and Redline continued collecting on such debt.
13. That Plaintiff again, by and through their counsel sent letters informing Resurgent and Redline of the settlement of this account and provided them a copy of the formalized settlement check as proof. Yet, Resurgent and Redline still did nothing.
14. Since that time, the Defendants have refused to return phone calls or respond to any correspondence from Plaintiff in regards to this account.

15. The foregoing acts and omission of the Defendants were undertaken willfully, intentionally and knowingly and/or in gross disregard of the rights of the Plaintiff.

D. FIRST CLAIM FOR RELIEF

16. Plaintiff, repeats, realleges and incorporates by reference paragraphs 1-15.

17. The Defendants' violations of the FDCPA include, but are not limited to the following:

- a. Falsely representing that the Plaintiff owed the alleged debt 15 USC §1692c(2)(A); and
- b. Communicating with a consumer they knew to be represented by an attorney 15 USC §1692e; and
- c. Misrepresenting the character and/or legal status of the debt 15 USC §1692e; and
- d. Threatening to take action and taking action that cannot be taken 15 USC §1692e(5); and
- e. False representations or deceptive means to collect or attempt to collect a debt 15 USC §1692e(10); and
- f. Engaging in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt 15 USC §1692d.
- g. Using unfair and unconscionable means to collect or attempt to collect a debt 15 USC §1692f.

18. Under 15 USC §1692k the Defendant' violations of the FDCPA render them jointly and severally liable to the Plaintiff for actual damages, statutory damages, declaratory relief, costs and attorney fees.

E. SECOND CLAIM FOR RELIEF

19. Plaintiff, repeats, realleges and incorporates by reference paragraphs 1-18.

20. The Defendants' violations of the TDCPA include, but are not limited to the following:

- a. Violations of §392.301(a)(8), by threatening to take and taking action prohibited by law; and
- b. Violations of §392.304(a)(8) by misrepresenting the character, amount and status of the consumer debt; and
- c. Violations of §392.304(a)(19) by using false representation and deceptive means to collect a debt; and

21. Under §392.403 the Defendants' violations of the TDCPA render them jointly and severally liable to Plaintiff for actual damages, statutory damages, injunctive relief, declaratory relief, costs and reasonable attorney fees.

F. THIRD CLAIM FOR RELIEF

22. Plaintiff, repeats, realleges and incorporates by reference paragraphs 1-21.

23. The Defendants' violations of the TDCPA also constitute a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code and is actionable under that subchapter.

24. Under Tex. Bus. & Com. Code §17.50(b)(2) the Defendants' violations of the DTPA render the jointly and severally liable to the Plaintiff for treble damages, injunctive relief and reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays this Court:

1. Declare the Defendants' actions violate the FDCPA, the TDCPA and the DPTA; and
2. Enjoin the Defendants' actions which violate the TDCPA and DTPA; and
3. Enter judgment for Plaintiff against the Defendants for actual damages, statutory damages, costs, attorney fees as provided by 15 USC §1692k(a) and/or TDCPA §392.403 and treble damages under the DTPA; and
4. Grant such other further relief as is deemed just.

Dated: June 5, 2009

s/Kimberly Soard
Kimberly Soard, State Bar No 00797815
SD of Texas No 5689451
The Law Offices of Kimberly Soard PC
3722 Bristleleaf Dr
Katy, TX 77449
281-647-0899
Facsimile 832-553-3087
Attorney for Plaintiff(s)

Office Hours:
M-Th 8am-11pm est
Fri. 8am-10pm est
Sat. 8am-4pm est
Sun. 9am-1pm est

May 24, 2007

726 Exchange Street, Suite 700, Buffalo, NY 14210
Toll Free: 1-866-464-0277

Raymond Kelley

XX,

Previous Creditor: GB Capital - Wal-Mart
Current Creditor : Resurgent Capital Services, LP
Account # : 213404915
Balance : \$4,436.36
Reference # : 028490157

***** SETTLEMENT OFFER *****

Fax attention:
Fax #: (909) 581-7316

Dear Raymond Kelley:

On behalf of our client, Resurgent Capital Services, LP, Capital Management Services, L.P. is willing to accept less than the full balance due as a settlement on the above mentioned account. The settlement offer shall be \$1,414.06 due in our office no later than 05/30/07.

You may remit these settlement payments to Capital Management Services, L.P. 726 Exchange St. Suite 700, Buffalo, New York 14210 or call 1-866-464-0277 for other payment options.

Upon clearance of sufficient funds, our records will be updated to reflect that the above account has been satisfied.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

Important information may be found on the back of this letter. We are required under state law to notify consumers of the following rights.

This list does not contain a complete list of the rights consumers have under state and federal law.

PLAINTIFF'S
EXHIBIT

A

Date: 05/25/2007

Client: Regina Kelley

Account Number: 6032203080522880

QUESTIONS? Please call the Creditor Services Department at (909) 982-5333

The Seideman Law Firm
701 Commerce Street, Suite 400
Dallas, TX 75202
Client: Regina Kelley
Account Number: 6032203080522880

19573

Date 05/25/2007

Pay To The Order Of: Capital Management

***1,414.06

ONE-THOUSAND FOUR-HUNDRED-FOURTEEN AND 06/100*****

Colonial Bank
6021 Preston Road
Frisco, TX 75034

SIGNATURE NOT REQUIRED

The maker has authorized this draft to Payee. Payee and
Maker to hold you harmless for payment of this authorized
draft. This draft shall be deposited only to credit of payee.
The absence of an endorsement is guaranteed.

This check is tendered in accordance with the attached
Settlement Agreement dated ____/____/____. If you cash this
check you agree that the above account is satisfied in full.

⑈19573⑈ ⑆062006319⑆ 8041880686⑈



Redline Recovery Services, LLC
2350 N. Forest Rd., Suite 31B
Getzville, NY 14068
1-716-250-4800

04/09/2009

Raymond Kelley
28803 Raestone St
Spring TX 77386-5442

Client Name: RESURGENT CAPITAL SERVICES, LLC
Balance: \$4,188.79
Account Number: 6032203080522880
Debtor ID: 3557627

Thank you for your request. Please be advised that we have been retained to collect the above referenced account.

The outstanding balance on the above referenced account is \$4,188.79. You can resolve this matter by calling us and paying by phone or sending your check or money order along with the bottom portion of this letter.

Please send your payment or correspondence to the processing center listed below:

Payment Processing Center
1145 Sanctuary Parkway, Suite 350
Alpharetta, Georgia 30009

Upon receipt and clearance of the payment in full, there will be no further outstanding obligation pertaining to this account.

We take pride in assisting our customers to resolve their situations. If you have any questions or wish to discuss your account with one of our representatives, please call our toll free number at 1-866-316-3248 x-4836 during normal business hours. Monday - Thursday 8:00 AM - 9:00 PM EST; Friday 8:00 AM - 4:30 PM EST; and Saturday 9:00 AM - 12:00 PM EST.

This is an attempt to collect a debt and any information obtained will be used for that purpose. This is a communication from a debt collector.

Notice: See Enclosed Document for Important Information.

PAYMENT DUE DATE: April 24, 2009

CLIENT NAME: RESURGENT CAPITAL SERVICES, LLC
ACCOUNT NUMBER: 6032203080522880
ACCOUNT ID: 3557627
PAYMENT AMOUNT: 4,188.79

Raymond Kelley
28803 Raestone St
Spring TX 77386-5442

REDLINE RECOVERY SERVICES, LLC
1145 SANCTUARY PKWY, STE 350
ALPHARETTA, GA 30009

PLAINTIFF'S
EXHIBIT

C